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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Allocation of Costs Associated With	)	CC Docket No. 96-112
Local Exchange Carrier Provision of	)	
Video Programming Services	)	

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COMMENTS OF COMCAST CABLE COMMUNICATIONS, INC.
AND ADELPHIA COMMUNICATIONS CORPORATION

Thomas R. Nathan
COMCAST CABLE COMMUNICATIONS, INC.
1500 Market Street, 35th Floor
Philadelphia, Pennsylvania 19102-4735
(215) 981-7534

Randall D. Fisher
John B. Glicksman
ADELPHIA COMMUNICATIONS CORPORATION
Five West Third Street
Coudersport, Pennsylvania 16915
(814) 274-9830

Leonard J. Kennedy
DOW, LOHNES & ALBERTSON
A Professional Limited Liability Company
1200 New Hamshire Ave., N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

Their Attorney

May 31, 1996

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SUMMARY

One of the critical issues facing the Commission as it implements the Telecommunications Act of 1996 is the allocation of incumbent ILEC investments and expenses between regulated telephone services and nonregulated services such as video programming. As the Commission correctly recognizes, its current cost allocation rules were adopted before the provision of telephone and video services over integrated facilities was possible and changes in the rules are needed as incumbent LECs continue investing in facilities necessary for them to enter the video programming market.

Comcast and Adelphia propose that the Commission require ILECs to allocate at least 70 percent of the common costs of facilities used for video and telephone service to nonregulated services. Use of a fixed factor to allocate common costs between regulated and nonregulated services is administratively simple, technologically neutral and uniformly applicable to incumbent LECs. A 70 percent allocation to nonregulated services is the minimum necessary to protect telephone ratepayers from paying more than the stand-alone costs of an upgraded telephone network.

The Commission also must require ILECs to treat any reallocation of costs from regulated to nonregulated services as an exogenous cost for price cap purposes, with a corresponding decrease in price cap indices. Only by reducing rates for regulated telephone services to reflect any reallocation of costs from regulated to nonregulated services will telephone ratepayers receive some benefit from the joint use of facilities for which they have paid.

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COMMENTS OF COMCAST CABLE COMMUNICATIONS, INC.
AND ADELPHIA COMMUNICATIONS CORPORATION

Comcast Cable Communications, Inc. ("Comcast") and Adelphia Communications Corporation ("Adelphia"), by their attorneys, hereby submit these comments in response to the Notice of Proposed Rulemaking (the "*Notice*") issued by the Federal Communications Commission (the "Commission") in the above-referenced proceeding.

I. INTRODUCTION

The Telecommunications Act of 1996 authorizes local exchange carriers ("ILECs") to provide video programming services to subscribers in their telephone service areas, but it also prohibits LECs from using "services that are not competitive to subsidize services that are subject to competition."[1/] Accordingly, in anticipation that LECs will provide competitive video services over the same facilities they use for regulated telephone service, the Commission proposes in this proceeding to reexamine its rules governing "how incumbent local exchange carriers allocate their costs between regulated and nonregulated activities."[2/] Specifically, the Commission states:

> The basic problem addressed in this proceeding is how to allocate common costs between the nonregulated offerings that will be introduced by incumbent local exchange carriers and the regulated services they already offer. Our current cost allocation rules were not designed for this task.[3/]

The allocation of common costs between regulated telephone services and nonregulated services, such as video programming, is one of the most critical issues facing the Commission as the telephone and cable industries converge. Adelphia and Comcast have addressed this issue in various Commission proceedings regarding video dialtone and applaud the Commission's determination to resolve these cost allocation questions in this proceeding.[4/]

As LECs continue their massive spending campaign to support entry into the video services market, the rules adopted here will be essential to protecting telephone ratepayers and promoting fair competition between incumbent LECs and cable operators. To achieve

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1/ 47 U.S.C. § 571; 47 U.S.C. § 254(k)

2/ *Notice* at ¶ 2.

3/ *Id.*

4/ *See, e.g., Bell Atlantic Telephone Cos. (Revisions to Tariff F.C.C. No. 10)*, Transmittal Nos. 741, 786, CC Docket No. 95-145 ("*Dover Video Dialtone Investigation*"), Opposition of Adelphia Communications Corporation to Bell Atlantic's Direct Case (filed Nov. 30, 1995); *Application of Southern New England Telephone Co.*, W-P-C 7074, Reply to SNET's Opposition to Petitions to Deny, filed by Comcast Cable Communications, Inc. and Cox Enterprises, Inc. (July 21, 1995) ("Reply to SNET Opposition") these dual goals established by the 1996 Act, the Commission should require ILECs to allocate at least 70 percent of common costs of joint use outside plant to nonregulated services. The Commission also must require appropriate price cap adjustments and rate reductions when ILEC investment is reallocated from regulated to nonregulated services.

II. THE COMMISSION'S GOALS IN THIS PROCEEDING ARE CONSISTENT WITH THE 1996 ACT.

In the *Notice*, the Commission stated that it had three basic goals in this proceeding: (1) to facilitate the development of competitive telecommunications offerings; (2) to facilitate LEC entry into the video distribution and programming services market; and (3) to ensure that telephone rates are just and reasonable. *Notice* at ¶ 22. These three goals correctly recognize that Congress sought to promote competition for all services, but not at the expense of captive telephone ratepayers. Indeed, as recognized by the Commission, "telephone ratepayers are entitled to at least some of the benefit of the economy of scope between telephone and competitive services." *Id.* at ¶ 23.

To achieve these goals, the Commission hopes to establish cost allocation principles that are administratively simple, adaptable to evolving technologies, capable of uniform application among incumbent LECs and consistent with economic principles of cost causation. *Notice* at ¶ 24. The Commission correctly has identified the type of cost allocation rules that are needed to achieve the goals established by Congress in the 1996 Act. Cost allocation rules that are difficult to apply or yield unpredictable results will facilitate anticompetitive conduct by incumbent LECs and hinder the development of competitive markets.

As described in the following sections, the best way to achieve the goals established by the Commission and Congress is to require incumbent LECs to allocate at least 70 percent of the common costs of joint use outside plant to nonregulated services and to require exogenous cost treatment for any cost changes that result from a reallocation of costs from regulated to nonregulated services. By taking these actions, the Commission can minimize the risk of anticompetitive cross-subsidization and promote the development of fair competition in all telecommunications markets.

III. ALLOCATING 70 PERCENT OF THE COMMON COSTS OF OUTSIDE PLANT TO NONREGULATED SERVICES IS NECESSARY TO ACHIEVE THE GOALS ESTABLISHED BY THE COMMISSION AND CONGRESS.

A. A Fixed Allocation Factor for Joint Use Outside Plant is Superior to the Other Allocation Methods Considered in the Notice.

The Commission correctly recognizes that the allocation of loop costs is the single most important issue in this proceeding. *Notice* at ¶ 2. Loop costs presently are directly assigned to regulated services because the deployed loops are used exclusively to provide regulated telephone services. However, as ILECs begin to provide additional services, notably video programming, over loop facilities that are used for regulated telephone services, costs must be allocated between regulated and nonregulated services to ensure that customers of regulated services enjoy the benefits of any joint use of facilities.

Under the existing Part 64 rules, when direct assignment of plant costs is not possible, costs are allocated based on the relative regulated and nonregulated use during a forecasted three-year period. 47 C.F.R. § 64.901(b)(4). The Commission tentatively concludes, however, that a usage-based allocation may produce results that are inconsistent with the goals of the 1996 Act and the Commission's goals for this proceeding. Rather than employ a usage-based factor, the Commission concludes a fixed allocation factor will better achieve Congress' and the Commission's goals.[5/]

The decision to prescribe a fixed allocation factor for loop costs used to provide regulated and nonregulated services is a sound one. As recognized by the Commission, a fixed factor would be simpler to apply than a usage-based factor, can be applied uniformly among incumbent LECs and is adaptable to changes in technology. Furthermore, the use of a fixed cost allocation factor will produce results that are much more predictable than a usage-based approach and more in line with cost causation principles. Prescribing a fixed factor for outside plant also ensures that cost allocations cannot be manipulated to place an unreasonable burden on telephone ratepayers, a result which would be patently at odds with the 1996 Act.[6/]

As recognized by the Commission, a fixed allocation factor for outside plant that is used for video and telephone services is far superior to an allocation based on the ratio of directly assigned investment. While the Commission's cost allocation rules contain a general allocator based on the ratio of directly assigned costs, 47 C.F.R. § 64.901(b)(iii), the

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5/ The *Notice* also asks whether its tentative conclusion to allocate loop costs based on a fixed factor is equally applicable to interoffice trunks. Because direct assignment is equally difficult in both cases, the benefits of the fixed factor approach are the same. Accordingly, the Commission should establish a presumption that interoffice transmission facilities will be subject to the same cost allocation as loops.

6/ A fixed allocation factor only should be applied when direct allocation on a cost causative basis is not possible. Furthermore, the fixed allocation factor only would apply to outside plant investment, not to a carrier's investment in switching facilities which would continue to be allocated on a usage-sensitive basis.

Commission adopted this rule based on its expectation that 80-90 percent of costs would be allocated on a cost causative basis, rather than with the general allocator.[7] In the case of outside plant used for video and telephone services, the Commission already has recognized that such a small portion is capable of direct assignment that using the ratio of directly assigned costs as an allocation factor is an invitation for ILECs to manipulate their network architectures so as to minimize or even avoid allocating costs to nonregulated services.[8] Accordingly, there is no reasonable basis for using the ratio of directly assigned plant as a general allocation factor.

B. The Commission Should Require Incumbent LECs to Allocate At Least 70 Percent of Outside Plant Common Costs to Nonregulated Services.

The Commission tentatively concluded that a fixed allocation factor should be applied to the common costs of outside plant that is used for both regulated and nonregulated service, but it did not conclude what factor should be used or how it should be determined. Comcast and Adelphia believe the Commission should ensure that under no circumstances are regulated telephone services allocated an amount that exceeds the cost of an upgraded telephone-only network. Any costs beyond this "stand-alone" cost provide no added benefit to telephone company ratepayers and must be allocated to nonregulated services.

In its various video dialtone proceedings, the Commission was presented with substantial evidence regarding the stand-alone cost of a telephone network in comparison to

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7/ *See Separation of Cost of Regulated Telephone Service from Costs of Nonregulated Activities*, Report and Order, 2 FCC Rcd 1298, 1318 n. 280 (1987).

8/ *See Dover Video Dialtone Investigation*, Order (rel. June 9, 1995).

the costs of integrated networks proposed by various LECs. For example, using this methodology, Dr. Leland Johnson demonstrated that roughly 76 percent of Bell Atlantic's Dover, New Jersey video dialtone facility should have been allocated to video services.[9] Based on this evidence, the Commission should require ILECs to allocate a minimum of 70 percent of the common costs associated with outside plant used for regulated telephone and video services to nonregulated services.[10]

The *Notice* also raises the question whether the current usage-based allocation for spare facilities is appropriate given LEC investment in broadband facilities that will be used to provide video programming and other high capacity services. *Notice* at ¶ 51. The Commission notes that telecommunications networks are evolving, with fiber cables being deployed closer to subscribers' premises. At the same time, however, the relative magnitude of spare facilities is increasing and, in some cases, greater than the capacity of working

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9/ *Dover Video Dialtone Investigation*, Opposition of Adelphia Communications Corporation to Bell Atlantic's Direct Case, Exhibit A at 19; *see also* Leland L. Johnson, *Designing Safeguards Against Cross-Subsidization in Video Dialtone Services*, CC Docket No. 87-266, submitted by Adelphia Communications Corp., *et al.* (Oct. 3, 1994).

10/ In the context of video dialtone, Comcast participated in pleadings with Cox Enterprises, Inc. in which a 50/50 allocation of network rebuild costs between telephone and video services was advocated. *See, e.g.,* Reply to SNET Opposition at 5-7. While the 50/50 approach is far superior to the allocation methodologies advanced by the LECs in support of their video dialtone proposals, it may result in an allocation to telephone services in excess of the stand-alone cost of upgraded telephone facilities. Given Congress' direction that telephone ratepayers not subsidize LEC video endeavors, the Commenters believe at least a 70 percent allocation of common costs to nonregulated services is appropriate.

facilities. For example, the Commission states that for the years 1991 through 1994, anywhere from 63 to 70 percent of deployed fiber was spare fiber.[11/]

In allocating the costs of spare facilities, the Commission correctly concludes that "Congress did not intend that telephone exchange service or exchange access subscribers pay rates designed to recover the costs of spare capacity that eventually will be used for video programming and other services that may be competitive." *Notice* at ¶ 53. The amount of spare fiber in LEC networks demonstrates the reasonableness of Adelphia and Comcast's proposal to allocate at least 70 percent of common costs to nonregulated services. If such a small portion of existing fiber actually is necessary to provide telephone service, the remainder presumptively should be allocated to nonregulated services.

IV. EXOGENOUS COST TREATMENT OF COST REALLOCATIONS IS NECESSARY FOR TELEPHONE RATEPAYERS TO BENEFIT FROM JOINT USE OF FACILITIES.

In the *Notice*, the Commission states that its price cap rules specify that cost changes caused by the reallocation of investment from regulated to nonregulated activities pursuant to the Part 64 cost allocation rules are considered exogenous cost changes. *Notice* at ¶ 60. The Commission asks whether all reallocation to nonregulated activities should trigger decreases in price cap indices. *Id.*

Exogenous cost treatment for cost reallocations and a corresponding decrease in price cap indices is critical to achieving the Commission's goal of ensuring that telephone ratepayers receive some benefit from the joint use of facilities that now are used solely for

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11/ *Notice* at ¶ 52 n.60.

regulated telephone service. These facilities have been paid for by customers of regulated services and any use of these facilities for nonregulated services must be compensated through prospective rate reductions. Any failure to adjust a LEC's price cap indices to reflect a reallocation of costs to nonregulated services would be tantamount to a direct cross-subsidy at the expense of the LEC's telephone customers.

The *Notice* also asks whether Part 64 processes are necessary for price cap LECs that are not subject to a sharing obligation. *Notice* at ¶ 62. As an initial matter, Section 220(a)(2) of the Communications Act of 1934 requires the Commission to establish allocation rules, without regard to the pricing rules applied by state and federal regulators. 47 U.S.C. § 220(a)(2); *see also* 47 U.S.C. § 254(k). Furthermore, the calculation of a carrier's productivity and its sharing obligation are entirely dependent on the carrier's reported costs. As the Commission recognizes, carriers may decide what productivity factor to use and whether to participate in sharing on a year-to-year basis. Thus, cost allocation remains relevant for all price cap LECs, regardless of whether they have elected sharing for the current year. Indeed, as long as any regulator reviews an incumbent LEC's cost information for any purpose (*e.g.*, universal service) the allocation of costs between regulated and nonregulated services remains a necessary and important function.

V. CONCLUSION

Comcast and Adelphia strongly support the Commission's tentative conclusions in this proceeding and urge the Commission to require LECs to allocate at least 70 percent of outside plant used for telephone and video services to nonregulated services and to require exogenous cost treatment of reallocations from regulated to nonregulated services. By imposing these requirements on incumbent LECs the Commission can achieve the dual goals of promoting competition and protecting telephone ratepayers established by the 1996 Act.

Respectfully submitted,

COMCAST CABLE COMMUNICATIONS, INC.
ADELPHIA COMMUNICATIONS CORPORATION

By: Leonard J. Kennedy
LEONARD J. KENNEDY
DOW, LOHNES & ALBERTSON
A Professional Limited Liability Company
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2630
Counsel to
Comcast Cable Communications, Inc.
Adelphia Communications Corporation

By: Thomas R. Nathan / LJK
THOMAS R. NATHAN
Deputy General Counsel
Comcast Corporation
1500 Market Street
Philadelphia, PA 19102-4735
(215) 981-7534662-5278

By: John B. Glicksman / LJK
JOHN B. GLICKSMAN
Deputy General Counsel
ADELPHIA CABLE
COMMUNICATIONS
Five West Third Street
Coudersport, PA 16915
(814) 274-9830

May 31, 1996

CERTIFICATE OF SERVICE

I, Jeanette M. Corley, a secretary at the law firm of Dow, Lohnes & Albertson, hereby certify that on this 31st day of May, 1996, a copy of the **Comments of Comcast Cable Communications, Inc. and Adelphia Communications Corporation** was sent via hand delivery to the following:

Ken Ackerman
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W., Rm. 500
Washington, D.C. 20554

Kenneth P. Moran
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W., Rm. 500
Washington, D.C. 20554

Ernestine Creech
Federal Communications Commission
Accounting & Audits Division
2000 L Street, N.W., Rm. 812
Washington, D.C. 20554

International Transcription Service
2100 M Street, N.W
Suite 140
Washington, D.C. 20037

Andrew Mulitz
Federal Communications Commission
Common Carrier Bureau
Accounting and Audits Division
2000 L Street, N.W., Rm. 257
Washington, D.C. 20554

Jeanette M. Corley